IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-12-2005

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 712 of 2004
and
C.M.P. No. 7031 of 2004
V.C.M.P. No. 14011 of 2005
-o-

A. Sreedevi .. Petitioner/Respondent

Versus

Vicharapu Ramakrishna Gowd .. Respondent/Petitioner.

Petition filed under Article 227 of The Constitution of India against the notice issued in HMOP No. 706 of 2004 on the file of Principal Judge, Family Court, Chennai.

For Petitioner : Mr. P. Subba Reddy
For Respondent : Mr. B.B. Venkatesan

ORDER

The respondent in HMOP No. 706 of 2004 on the file of Principal Judge, Family Court, Chennai has filed this revision under Article 227 of The Constitution of India. The HMOP No. 706 of 2004 was filed under Section 9 of the Hindu Marriage Act by the respondent herein for restitution of conjugal rights and for other reliefs.

2. The case of the respondent herein is that he married the revision petitioner on 15-03-1992 according to Hindu rites and customs in the presence of relatives and elders and the marriage function was held at the residence of the revision petitioner herein at Madras; that after the marriage, they lived together at Madras for three days; that on 18-03-1992, the respondent went to Addankivaripalam to attend his personal work, later, he came back to Madras on 19-03-1992; that the petitioner herein refused to live with him without any reasons; that subsequently, both of them went to Addankivaripalam and after two days the revision petitioner came back to Madras; that the respondent waited for the petitioner, but she did not turn up, hence, he issued a notice on 08-08-1992 and the same was also received, but no reply was sent by her; that the respondent has filed similar Petitions under Section 9 of the Hindu Marriage Act, which was dismissed as withdrawn on 22-12-1994 as the dispute was settled mutually; that the petitioner and the respondent lived together as wife and husband continuously from 22-12-1994 to 17-01-2003; that on 18-01-2003, the respondent came to his native place where he met with an accident and stayed back and despite his notice dated 12-

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12-2003, she has not joined him, hence, he filed the present HMOP.

3. The trial court issued notice to the revision petitioner herein and she filed this revision petition praying to reject the above said HMOP.

4. The case of the revision petitioner is that she is an actress in Hindi movies, having lot of fans throughout India and they used to write letters to her; that the previous records shows that the respondent herein has filed similar case against Mrs. Priyanka Gandhi Gothra, daughter of Mrs. Sonia Gandhi and Mrs. Jayapradha, a film actress-cum-politician with an intention to gain cheap publicity in print and visual media; that after filing the said HMOP, the media has given wide publicity to him; that the averments relating to the alleged marriage, venue and the subsequent events were all false and imaginary and not on factual basis; that the petitioner was not aware of the respondent at all; that the trial court was used as a tool by the respondent herein for gaining cheap publicity; that the trial court, without application of mind issued notice to the revision petitioner to appear; that the trial court failed to even look into the documents filed by the respondent and mechanically issued notice to her; that the documents filed along with the HMOP are crystal clear that they are not genuine, cooked up for filing the present case; that in any event, the petition under Section 9 of the Hindu Marriage Act is unsustainable in Law.

5. This Court, in CMP No. 7031 of 2004 in CRP No. 712 of 2004 granted interim stay on 23-06-2004. The respondent herein has filed VCMP No. 14011 of 2005 on 22-08-2005 reiterating the allegations, admitting the cases filed by him against the other two ladies, whose names were mentioned supra. It is further alleged by the respondent that one of such lady's family members offered Rs.50 lakhs to him but he refused to receive; that the said lady, though willing to join him, she was prevented, with the result, she attempted suicide; that the other lady offered Rs.25 lakhs to withdraw the case and also offered a State level post in the party and the same was also refused by him; that he further admitted that the case filed by the respondent against one of the ladies was dismissed by the Court and in respect of the case filed by him against another lady, he was punished by the Delhi Court; that this Court cannot interfere in the proceedings of the trial court under Article 227 of the Constitution of India and prayed for vacating the interim order by dismissing the revision.

6. The respondent has also made several allegations against the husband of the revision petitioner as well as the counsel appearing for her before this Court. The husband of the petitioner filed an affidavit denying the averments made by the respondent. Similarly, the counsel for the revision petitioner has also filed an affidavit denying the averments made against him by the respondent.

7. This Court posted the case for hearing on 25-11-2005 and on that day, there was no representation for the respondent, hence, the matter is posted today for orders.

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8. Today, when the matter is taken up for hearing, the learned

counsel appearing for the respondent has made an endorsement in the bundle reporting 'no instructions'.

9. Mr. Subba Reddy, learned counsel appearing for the revision petitioner submits that the respondent herein is in the habit of filing false cases against popular lady personalities; that it is evident that he filed more or less similar cases against them in which one case was dismissed and the case against another person is concerned, admittedly the Delhi Court dismissed it and punished the respondent herein; that the respondent has filed only cooked up xerox copy of the documents along with the HMOP; that the said documents, on its face seen that they were cooked up for the purpose of filing the vexatious HMOP knowing that the petitioner is a popular cine artist in India and such petition attract both visual and print media; that the petitioner has achieved the said object by making the Courts as a tool, which amounts to abuse of process of Court; that when this revision is taken up, the respondent deliberately failed to give instructions to his counsel; that if this type of vexatious case is allowed to be entertained, it would send wrong signal to the other persons, who are in the habit of gaining cheap popularity, knowing fully well that it will affect the reputation of others substantially and prayed for allowing this revision by rejecting the HMOP No. 712 of 2004 before the court below with exemplary costs and also prayed this Court to proceed against the respondent for contempt of Courts.

10. In support of the above contentions, the learned counsel for the petitioner relied on the below mentioned decisions of the Honourable Supreme Court;-

i) (Sube Singh vs. State of Haryana and others) (2002) 10 Supreme Court Cases 121 Wherein it is held in Para Nos. 6, 7 and 8 thus:-

> "6. In the course of the hearing, our attention was drawn to the additional affidavit of O.P. Singh, IPS, Superintendent of Police, Jind, Haryana, filed pursuant to the order of this Court dated 17-7-2001. The affidavit is dated 11-8-2001 and is verified on the basis that the averments made in paras 1 to 9 of the preliminary submissions and paras 1 to 12 thereof were true and correct to the deponent's knowledge, based on information derived from the official record, which he believed to be correct. The verification clause adds, "Nothing has been concealed or stated incorrect therein." In paragraph 12 of the affidavit, the deponent has stated:
>
> > "The petitioner, instead of using his moral authority over his son to restrain him and discharging the duty of a responsible citizen to help the law-enforcing agencies, is misusing the process of law to facilitate his son's antisocial, parasitic bad criminal lifestyle. He is, apparently, an overground, sleeping partner of his son's gang, extending all possible help and

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support to him in his campaign to kill and loot the innocent civilians and now the police if they try to intervene, the son doing it with bullets and father with false allegations and litigations."

7. We asked learned counsel for the respondents to tell us on what basis the deponent had averred that the petitioner was "an overground, sleeping partner of his son's gang, extending all possible help and support to him ...". We did so for the reason that had we been so satisfied, we would have considered closing this matter. Learned counsel for the respondents fairly stated that there was no factual basis for the averments quoted above.

8. It is, prima facie, clear that a false statement has been made on oath by the deponent and that it was intended to subvert the process of the law. We, therefore, issue to the deponent, O.P. Singh, suo motu, notice to show cause why action should not be taken against him and he should not be punished for contempt of court. The notice shall be returnable after four weeks."

ii) (U.P. Resi Emp Co-op. House B Society and others v. New OkhlaIndustrial Development Authority and others) 2003 AIR SCW 3304 wherein it was held in Para 10 and 11 thus:-

"10. It, therefore, prima facie appears that Mr S.C. Pabreja has filed a false affidavit before this Court with a view to mislead this Court and with a view to see that this Court does not pass any order, adverse to what NOIDA authority is contending.

"11. It has been held in the case of Hiralal Chawla v. State of U.P.[1] that filing of false affidavit also amounts to contempt of this Court. The Registry is, therefore, directed to issue show-cause notice to Shri S.C. Pabreja, returnable before us within four weeks from today, as to why action in contempt should not be taken against him for having filed a false affidavit in this Court."

11. The respondent herein has filed his written argument dated 22-09-2005 stating that this revision is not maintainable; that the disputed relationship of husband and wife be proved only after let in evidence and marking documents before the trial court and prayed for dismissal of the revision petition. As mentioned above, the counsel for the respondent has made an endorsement reporting no instructions and he has not advanced any argument but prayed this Court to consider the written statement filed already.

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12. The Family Courts Act, 1984 (Act 66 of 1984) was enacted by the Parliament, which came into force by notification in the official gazzette on different dates for different States. In so far as Tamil Nadu is concerned, it came into force with effect from 02-10-1986. The statements of objects and reasons of the said Act is that is as follows:-

> 'Several organisations of women, other organisations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure, 1908 was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting the conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt in the public interest, to establish Family Courts for speedy settlement of family disputes."

13. Family Courts have been established with the object of achieving socially desirable results and adherence to rigid rules of procedures and evidence should be eliminated.

14. Section 10 of Family Courts Act says as follows:-

> "10. Procedure generally.- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (V of 1908) and of any other law for the time being in force shall apply to the suits and proceeding (other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court.
>
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.
>
> (3) Nothing in sub-section (1) or sub-section

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(2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

15. The above said provisions of Family Court says that subject to the provisions of the Family Court Act, the provisions of Civil Procedure Code shall apply.

16. Arguments were advanced by the learned counsel for the petitioner that the petitioner is not even aware of the respondent and the relationship as wife and husband was totally denied; that the vexatious and false HMOP filed by the respondent herein is liable to be rejected in limini under Order VII Rule 11 CPC on the ground of non-disclosure of cause of action.

17. If on a meaningful, not formal reading of plaint or petition, it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the trial court should exercise its power under Order VII Rule 11 CPC. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shut down at the earliest stage. In the decision reported in (T. Arivandandam vs. T.V. Satyapal and another) AIR 1977 Supreme Court 2421, it was held in para-5 thus:-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

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It is seen from the above said judgment that it is the duty of the

trial court to read the plaint, not formally, but on a meaningful way and on such reading it is manifestly vexatious and meritless in the sense of not disclosing a fair right to sue, it should exercise its power exercisable under Order VII Rule 11 CPC taking care to see that the grounds mentioned therein are fulfilled and if clear drafting has created the illusion of cause of action, nip it in the bud. The Penal Code is also resourceful enough to meet such men, and must be triggered against them.

18. Now, I proceed to decide as to whether the HMOP No.706 of 2004 filed by the respondent herein before the Family Court is liable to be rejected as prayed for by the petitioner.

19. Before the trial court, the respondent has enclosed a wedding invitation dated 27-01-1992 in which the respondent is figured as bridegroom. Under his name, it is stated that he is the 'former husband of Jayapradha, Cine Artist', however, the said words were struck out in a manner the same is visible and readable. The date and venue of the said marriage were mentioned as 'on Sunday the 15th March 1992 at 10.23 a.m. at Bride's residence at H.No.1, Bishop Wallers Avenue South, CIT Colony, Madras-4'. It is necessary to mention that the name of the press where the invitation was printed is not mentioned. The said invitation itself is shabby, sub-standard, strange, unusual and the way in which the respondent was projected as former husband of Jayapradha disclose his ulterior motive. The said invitation dated 27-01-1992 is not trustworthy at all, hence, this Court is of the view that the alleged marriage between the respondent and the petitioner is not at all proved.

20. The averments in the HMOP No. 122 of 1994, which was filed by the respondent before the Sub-court, Tenali, Andhra Pradesh and the averments made in the present HMOP are also different. Though it is stated that a notice dated 18-06-1992 was issued by the respondent prior to filing of HMOP No. 122 of 1994 before the Sub-court, Tenali and the same is enclosed in the present HMOP, only the alleged office copy of the said notice has been enclosed, but the acknowledgment was not filed to prove the service on the petitioner. The reason for withdrawing similar relief sought for before the Sub-court, Tenali also not validly explained by the respondent. If, after dismissal of the HMOP No. 122 of 1994 as not pressed and thereafter parties allegedly lived together, the HMOP No. 706 of 2004 ought to have been supported by documents, but no document is furnished by the respondent before the trial court. It is the duty of the trial court that such averment is made that after withdrawing the earlier HMOP they lived together, it should have been cautious and insisted for production of the documents, but no such efforts were taken by it. When the defect is apparent on the face of the record of the plaint, the duty of the Court under Order VII Rule 7 CPC is to examine the plaint before issuing summons.

21. This matter is not only important to the parties in the case, which is of relevance for the society and such matter calls for careful and in-depth consideration keeping in mind the sensitive nature of the dispute raised. The family Court is not expected to receive the cases presented, number them and issue summons mechanically. Section 7 of the Family Courts Act confer jurisdiction to the Family Courts, subject to

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other provisions of this Act, it also have jurisdiction exercisable by a Magistrate of the first class under Chapter 9 of Criminal Procedure Code and such other jurisdiction as may be conferred on it by other enactment. However, it is the duty of the Court to examine the petition before issuing summons. Any discovery of patent defect should not, as a Rule, be deferred, until summon has gone out and the written statement has come in.

22. The argument of the respondent is that the family Court issued summons to the petitioner, hence, if at all, the petitioner has to place the alleged facts before it and it is for the said Court to decide it finally. When petition suffers from vital defect, the mere issuance of summons by the trial court, it is not required that trial should proceed even without any triable issue is shown to arise, permitting the continuance of such suit is tantamount to licensing frivolous and vexatious litigation, that cannot be done. In this context, it is useful to refer the decision reported in (Patasibai and others vs. Ratanlal) (1990) 2 Supreme Court Cases 42, wherein, in Para Nos. 13 and 14, it was held thus:-

> "13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint was liable to be rejected under Order VII Rule 11, CPC on these averments. All that Shri Salve contended was that the court did not in fact reject the plaint under Order VII Rule 11, CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the High Court also overlooked this fatal defect. Since the plaint suffers from this fatal defect, the mere issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done.
>
> 14. It being beyond dispute that the plaint averments do not disclose a cause of action, the plaint is liable to be rejected under Order VII Rule 11, CPC without going into the applicability of Order XXIII Rule 3-A, CPC to the present suit. Having reached this conclusion, it is unnecessary to adopt the technical course of directing the trial court to make the consequential order of rejecting the plaint and, instead, we adopt the practical course of making that order in this proceeding itself to avoid any needless delay in conclusion of this futile

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litigation."

In the above said Judgment of the Honourable Supreme Court, it was held that it is not proper that summons having been issued, the trial court must proceed since it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint, which amounts to a fatal defect.

In the decision reported in (Saleem Bhai and others vs. State of Maharashtra and others) AIR 2003 Supreme Court 759, wherein in Para Nos. 9 and 10, it was held thus:-

> "9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.
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> 10. We are, therefore, of the view that for the aforementioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial court for deciding the application under Order 7 Rule 11 CPC on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law."

In the above decision, the Honourable Supreme Court held that the trial court can exercise its power under Order VII Rule 11 CPC at any stage of the suit, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. Hence, the defence of the respondent that the trial court alone is competent is not tenable in view of the fatal defects pointed out in the HMOP.

23. It is to be remembered that in this case, the petitioner herein has not filed any application under Order VII Rule 11 CPC before the trial court seeking the relief of rejecting the plaint but chosen to approach this Court by filing this revision under Article 227 of the

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Constitution of India. Article 227 of the Constitution of India runs as follows:-

> "227. Power of superintendence over all Courts by the High Court – (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
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> (2) Without prejudice to the generality of the foregoing provisions, the High Court may-
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> (a) call for returns from such courts;
>
> (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
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> (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
>
> (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein;
>
> Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
>
> (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under law relating to the Armed forces.

24. Any plea which was not raised before the subordinate court can be raised before the High Court in the writ proceedings for the first time. The general Rule is the ground which is not specifically taken before the trial Court shall not be allowed to be urged before the High Court. However, there is exceptions to the general rule that when a plea which goes to the root of the question and is based on admitted and uncontroverted facts, such plea should be allowed to be raised for the first time in writ petitions. In this context, it is useful to look into below mentioned decisions of the Honourable Supreme Court.

In the decision reported in (A.St. Arunachalam Pillai vs. M/s. Southern RoadwaysLtd and another) AIR 1960 Supreme Court 1191, in para-5, it was held thus:-

> "5. In our opinion, although the respondent had submitted to the jurisdiction of the Regional Transport Officer and had not in his petition under Article 226 in the High Court taken the objection that that officer had no jurisdiction to vary the conditions of a permit, the High Court acted rightly in allowing the respondent to urge that the Regional

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Transport Officer had no jurisdiction to vary the conditions of a permit. It was not until the decision of the High Court in Writ Appeal No. 107 of 1955 that it became the considered view of that Court that the Regional Transport Officer had no jurisdiction to make any such variation. When the law was so declared by the High Court it could not reasonably be said that the High Court erred in allowing the respondent to take this point although in its petition under Article 226 the point had not been taken. This was obviously because the decision of the High Court in Writ Appeal No. 107 of 1955 had not been given at the time of the filing of the petition. Since the question went to the root of the matter and it involved the question whether the Regional Transport Officer had jurisdiction to vary the conditions of a permit the High Court, faced with a Division Bench decision of its own on the matter, could not very well refuse permission to the respondent to rely on that decision in support of its petition questioning the validity of the order of the Government of Madras made under Section 64-A of the Act."

In (Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others) AIR 1993 Supreme Court 2155, the Honourable Supreme Court in Para-12 held thus:-

"12. ....Generally, a point not raised before the tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course a must as indicated by this Court in A.M. Allison v. B.L. Sen particularly when the plea sought to be raised for the first time in a writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved."

25. Before this Court, the respondent has filed WVMP No. 14011 of 2005, supported by an affidavit, wherein in Para Nos. 8 and 9, it was stated thus:-

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"8. The respondent/petitioner further submits that Mrs. Vicharapu Jayaprada, Cine-Artiste and President M.P. is his first wife. They married on 15.3.1981 but her cruel family members separated the respondent from his wife (life) by adopting all forgery and cheating methods in the courts like present manner, beyond her knowledge after forging all her signatures. According to their forgery and cheating petitions court dismissed the Jayaprada's case so atrociously and so partially without examining her. She still remained as respondent's first wife without remarrying, so honestly and as a Chaste wife.

9. The respondent further submits that he had illegal intimacy with Mrs. Priyanka Gandhi. But she is not his lawful wedded wife. But he claimed her as his wife in the court by mistake. Though Court had not examined her and punished him on its own motion, without her specific allegation and her evidence in the Court."

26. As seen from Para-8 of the affidavit filed by the respondent, his alleged marriage with Jayapradha, cine artist still subsists, if so, how the alleged marriage with the petitioner is valid is not explained. The averments in para-9 of the said affidavit further disentitle the respondent to file the present HMOP No. 706 of 2004, even assuming for a moment that the marriage taken place as averred. In view of the said uncontroverted facts which goes to the root of the case, the said plea raised by the petitioner for the first time is entertained by this Court. The HMOP NO. 706 of 2004 filed by the respondent is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue.

27. In the light of the above facts, for the purpose of seeing that justice is meted out fairly and properly, it is to be seen whether this Court can exercise its power conferred under Article 227 of the Constitution of India to prevent abuse of process of Court or otherwise to secure the ends of justice. I gained strength from the decision of the Honourable Supreme Court, reported in (M/s. Pepsi Foods Limited and another vs. Special Judicial Magistrate and others) 1997 (9) Supreme 279, wherein it was held in Para Nos. 19 and 20 thus:-

"19. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid

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formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

In Waryam Singh v. Amarnath this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee where the High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

In Bathutmal Raichand Oswal v. Laxmibai R. Tarta this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal and that its function was limited to seeing that the subordinate court or tribunal functioned

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within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or re-appreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, "as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings". The Court referred with approval the dictum of Morris, L.J. in Rex v. Northumberland Compensation Appeal Tribunal.

In Nagendra Nath Bora v. Commr. of Hills Division this Court observed as under:

"It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

20. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

In the above judgment, the Honourable Supreme Court held that nomenclature under which the petition is filed before the court below is not quite relevant and that does not debar the Court from exercising its jurisdiction either under Section 226 or 227 of the Constitution of India.

26. In this case, the respondent is a person in the habit of filing false and vexatious cases against cine and political personalities with ulterior motive, knowing fully well that it affect their reputation.

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Admittedly he was convicted already, however, he repeats the same by filing the present HMOP No. 706 of 2004 without a right to sue or cause of action and recklessly making allegations against the counsel appearing for the other side, hence, HMOP No. 706 of 2004 on the file of Principal Judge, Family Court, Chennai is hereby rejected.

33. The Civil revision petition is allowed with costs of Rs.1,00,000/- payable by the respondent to the Tamil Nadu State Legal Services Authority, Chennai within a period of three months from today. Consequently, connected CMP and VCMP are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Principal Judge
Family Court
Chennai

2. The Secretary,
Tamil Nadu Legal Services Authority,
Chennai.

3. Mr.Vichrapu Rama Krishna Gowd,
S/o. Late Kotaiah, No.6, 10-24/4/5,
18th Ward, Repalle, J.C.J.C.,
Guntur, Andhra Pradesh.

CRP PD No. 712 of 2004
02-12-2005

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